

EXHIBIT A

10/11/16 a 11:30

#3

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

ALLSTATE INSURANCE COMPANY OF CALIFORNIA, ALLSTATE INSURANCE COMPANY, et al.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**ENDORSED
FILED****OCT 05 2016**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

MATTHEW BARNARD

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

(AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.)

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Sonoma County Superior Court
600 Administration Drive, Room 107-J
Santa Rosa, CA 95403

CASE NUMBER: (Número del caso):

SCV - 259537

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Michael D. Green and Scott R. Montgomery (278060)

Abbey, Weitzenberg, Warren & Emery, P.C.

P.O. Box 1566

(707) 542-5050

Santa Rosa, CA 95402

DATE:

(Fecha)

OCT 05 2016

JOSE O. GUILLEN

Clerk, by
(Secretario)

BERNADETTE SMITH

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify):

under:

- ☐ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☒ other (specify): *Business Organization, Form Unknown.*

- ☒ by personal delivery on (date): *10/11/16*

SUMMONS

Page 1 of 1

Form Adopted for Mandatory Use
Judicial Council of California
June 1994 (Rev. July 1, 2009)Code of Civil Procedure §§ 412.20, 405
www.courtinfo.ca.gov

Barnard, Matthew

CM-010

#3

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Michael D. Green (214142) and Scott R. Montgomery (278060) Abbey, Weitzenberg, Warren & Emery, P.C P.O. Box 1566 Santa Rosa, CA 95402-1566 TELEPHONE NO.: (707) 542-5050 FAX NO.: (707) 542-2589 ATTORNEY FOR (Name): MATTHEW BARNARD		FOR COURT USE ONLY ENDORSED FILED OCT 05 2016 SUPERIOR COURT OF CALIFORNIA COUNTY OF SONOMA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sonoma STREET ADDRESS: 600 Administration Drive, Room 107-J MAILING ADDRESS CITY AND ZIP CODE: Santa Rosa, CA 95403 BRANCH NAME: Unlimited Civil Jurisdiction		CASE NUMBER: SCV-259537 JUDGE: RENÉ AUGUSTE CHOUTEAU DEPT.:
CASE NAME: BARNARD V. ALLSTATE INSURANCE COMPANY		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<input type="checkbox"/> Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<input checked="" type="checkbox"/> Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary: declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Two
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 4, 2016

SCOTT R. MONTGOMERY

(TYPE OR PRINT NAME)

SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

#3

1 Michael D. Green, Esq. (SBN 214142)
 2 Scott R. Montgomery, Esq. (SBN 278060)
 3 **ABBEY, WEITZENBERG, WARREN & EMERY, P.C.**
 4 100 Stony Point Road, Suite 200
 5 P.O. Box 1566
 6 Santa Rosa, CA 95402-1566
 7 Telephone: 707-542-5050
 8 Facsimile: 707-542-2589
 9 mgreen@abbeylaw.com
 10 smontgomery@abbeylaw.com

ENDORSED
FILED

OCT 05 2016

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

Attorneys for Plaintiff Matthew Barnard

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SONOMA

MATTHEW BARNARD,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY
OF CALIFORNIA; ALLSTATE
INSURANCE COMPANY; and DOES 1-
100,

Defendants.

Case No. SCV-259537

COMPLAINT FOR DAMAGES

1. Plaintiff Matthew Barnard (hereinafter "Plaintiff") is, and at all relevant times was, an individual and resident of Sonoma County, California.

2. Defendants Allstate Insurance Company of California, Allstate Insurance Company, and DOES 1-100 are, and at all relevant times were, corporations organized and existing under the laws of the State of California, and/or corporations doing business in the State of California, including, but not limited to, in the County of Sonoma ("Allstate Defendants"). The Allstate Defendants are/were authorized to issue and deliver policies of insurance in the State of California including, but not limited to, in the County of Sonoma.

3. The Allstate Defendants, and DOES 1-100, are corporations, businesses, or other entities/persons engaged in the business of insurance, including but not limited to, issuance of policies, claims administration, claims adjusting, claims handling, and providing insurance

ABBEY, WEITZBERG, WARREN & EMERY P.C.
 100 Stony Point Road, Suite 200, P.O. Box 1566, Santa Rosa, CA 95402-1566
 Telephone: (707) 542-5050 Facsimile (707) 542-2589

1 coverage in the State of California including, but not limited to, in the County of Sonoma. Each
 2 of these defendants were authorized and directed to perform one or more insurance related
 3 functions by each of the other defendants. Some of the employees of one company work for,
 4 perform functions for, direct, and control the other companies.

5 4. Each of the defendants named herein were acting as the agent, servant, employee,
 6 alter-ego, co-conspirator, partner, parent, subsidiary, co-obligator, assignee, and/or joint
 7 tortfeasor with each of the other defendants. Each of the defendants authorized, ratified,
 8 approved, and/or planned the actions and/or lack of action of the other defendants. All things
 9 alleged herein to have been done by defendants, or their agents or employees, were done in the
 10 course and scope of said agency or employment, with the necessary authority, and were ratified
 11 and approved by each of the remaining defendants. Each defendant is in some manner legally
 12 responsible for the acts of each of the other defendants and is therefore responsible for the
 13 injuries and damages alleged in the complaint.

14 5. On January 22, 2016 Plaintiff was severely injured in a traffic accident (the
 15 "Accident"). The Accident occurred when a driver in the opposing lane of traffic crossed the
 16 centerline and impacted Plaintiff's vehicle. The opposing/at-fault driver died in the Accident.
 17 Plaintiff spent time in the hospital and underwent surgical procedures as a result of the Accident.
 18 The Accident was 100% the fault of the opposing driver. The opposing driver was not insured at
 19 the time of the Accident.

20 6. Plaintiff is/was insured by an insurance policy he purchased from/that was written
 21 by the Allstate Defendants (the "Policy"). Under the terms of the Policy Plaintiff has/had
 22 \$1,000,000.00 of uninsured/underinsured motorist insurance coverage applicable to pay damages
 23 resulting from the Accident. The Policy is/was delivered to Plaintiff in the State of California
 24 and all premiums for the policy were paid in the State of California.

25 7. On or about July 21, 2016 demand was made by Plaintiff (in writing) to the
 26 Allstate Defendants for payment of the \$1,000,000.00 limit of the Policy to compensate Plaintiff
 27 for his damages suffered in the Accident.

28 ///

10. On August 17, 2016, August 19, 2016, and September 2, 2016, and since that time, Plaintiff has continuously demanded payment from the Allstate Defendants of the \$450,000.00 agreed to be due/not in dispute under the Policy. The Allstate Defendants, despite repeat demand by Plaintiff, have failed and refused, and continue to fail and refuse, to pay Plaintiff the \$450,000.00 agreed to be due to him/not in dispute. The Allstate Defendants have also failed and refused, and continue to fail and refuse, to pay the additional \$550,000.00 of the \$1,000,000.00 Policy that has been repeatedly demanded by Plaintiff.

12. The Allstate Defendants issued the Policy to Plaintiff. Plaintiff is/was an insured under the Policy. The Policy is/was a contract between Plaintiff and the Allstate Defendants whereby the Allstate Defendants agreed to provide uninsured/underinsured motorist coverage to Plaintiff with a limit of \$1,000,000.00. The Policy is/was a contract entered into in the County of Sonoma for the provision of insurance, including uninsured and/or underinsured motorist coverage, to Plaintiff who is/was a resident of the County of Sonoma.

ABBEY, WEITZENBERG, WARREN & EMERY P.C.
 100 Stony Point Road, Suite 200, P.O. Box 1566, Santa Rosa, CA 95402-1566
 Telephone: (707) 542-5050 Facsimile (707) 542-2589

13. The express terms of the Policy, and the terms of the Policy required/read into the Policy under California law, require that the Allstate Defendants pay Plaintiff up to \$1,000,000.00 for his damages in the event of a loss covered by the Policy. The Accident is/was a loss covered by the Policy.

14. As detailed above, Plaintiff demanded \$1,000,000.00 from the Allstate Defendants with respect to the injuries and damages he suffered in the Accident. The Allstate Defendants responded to Plaintiff's demand. In responding the Allstate Defendants agreed, in writing, that \$450,000.00 was due to Plaintiff and disputed that the remaining \$550,000.00 of the \$1,000,000.00 limit of the Policy was due to Plaintiff. Despite agreeing that Plaintiff was entitled to (at least) \$450,000.00 under the Policy the Allstate Defendants have failed and refused, and continue to fail and refuse, to pay Plaintiff the \$450,000.00 not in dispute despite repeat and continuous demand.

15. At all relevant times all the necessary terms and conditions of the Policy were complied with by Plaintiff. The Allstate Defendants breached the express terms of the Policy, and the terms of the Policy required/read into the Policy under California law, by failing and refusing to tender the \$450,000.00 agreed to be due to Plaintiff despite repeat demand. Plaintiff timely demanded that the Allstate Defendants abide by the obligations under the Policy. The Allstate Defendants have failed and refused to do so.

16. The Allstate Defendants breached obligations to Plaintiff under the express terms of the Policy, and the terms of the Policy required/read into the Policy under California law, in the following ways (including but not limited to):

A. Failing and refusing to tender the \$450,000.00 agreed to be due/not in dispute to Plaintiff under the Policy in violation of California law which requires prompt payment of sums agreed to be due/not in dispute in a first-party uninsured/underinsured motorist claim without condition or delay by the insurer;

B. Failing and refusing to tender the \$450,000.00 agreed to be due/not in dispute to Plaintiff under the Policy in violation of California Civil Code § 1525;

C. Failing and refusing to settle Plaintiff's claim for the \$1,000,000.00 limit of the

ABBEY, WEITZENBERG, WARREN & EMERY P.C.
100 Stony Point Road, Suite 200, P.O. Box 1566, Santa Rosa, CA 95402-1566
Telephone: (707) 542-5050 Facsimile (707) 542-2589

1 Policy when Plaintiff's damages clearly exceed the Policy limit;

2 D. Acting unreasonably with respect to Plaintiff and his interests in breach of the
3 covenant of good faith and fair dealing;

4 E. Failing to promptly respond to Plaintiff's communications with respect to the
5 claim;

6 F. Failing to follow standards for investigating and evaluating claims imposed by
7 law, the California Insurance Code, and Department of Insurance regulations;

8 G. Adopting a narrow, strained, deceptive, and unreasonable interpretation of the
9 Policy inconsistent with the law, prior interpretation of the Policy, and the practice within the
10 insurance industry in an effort to delay/deny the payment of benefits due under the Policy;

11 H. Withholding benefits due to Plaintiff when the Allstate Defendants knew, or
12 should have known, Plaintiff was entitled to those benefits;

13 I. Failing to thoroughly and properly investigate Plaintiff's injuries and damages;

14 J. Placing the Allstate Defendants' interests ahead of the interests of Plaintiff;

15 K. Misrepresenting and misconstruing rights under the Policy;

16 L. Attempting to mislead Plaintiff in order to prevent him recovering benefits due
17 under the Policy;

18 M. Frustrating the reasonable expectations of Plaintiff by providing illusory and
19 deceptive coverage; and

20 O. Performing additional acts of unfair, unreasonable, and bad faith conduct, to be
21 proven at trial.

22 17. As a result of the failures and refusals of the Allstate Defendants to abide by the
23 law contained in the UM/UIM statutes/contract/Policy/cases interpreting same the Allstate
24 Defendants have forfeited, waived, and are estopped from asserting any right they might have
25 otherwise had to have any of the claims/issues raised in this lawsuit decided by arbitration.

26 18. As a direct and legal consequence of the above Plaintiff is entitled to recover
27 damages including, but not limited to, contract benefits to which he is entitled (described above),
28 interest on the amounts due from the date these amounts became due, attorney's fees, general

1 damages, special damages, and other consequential damages according to proof.

2 **SECOND CAUSE OF ACTION**

3 **Breach Of The Implied Covenant Of Good Faith And Fair Dealing**
 4 **[Against All Defendants]**

5 19. Plaintiff incorporates by reference all the above and below allegations and
 6 paragraphs as though fully set forth herein.

7 20. The Allstate Defendants issued the Policy to Plaintiff. Plaintiff is/was an insured
 8 under the Policy. The Policy is/was a contract between Plaintiff and the Allstate Defendants
 9 whereby the Allstate Defendants agreed to provide uninsured and/or underinsured motorist
 10 coverage to Plaintiff with a limit of \$1,000,000.00. The Policy is/was a contract entered into in
 11 the County of Sonoma for the provision of insurance, including uninsured and/or underinsured
 12 motorist coverage, to Plaintiff who is/was a resident of the County of Sonoma.

13 21. The express terms of the Policy, and the terms of the Policy required/read into the
 14 Policy under California law, require that the Allstate Defendants pay Plaintiff up to
 15 \$1,000,000.00 for his damages in the event of a loss covered by the Policy. The Accident is/was
 16 a loss covered by the Policy.

17 22. As detailed above, Plaintiff demanded \$1,000,000.00 from the Allstate
 18 Defendants with respect to the injuries and damages he suffered in the Accident. The Allstate
 19 Defendants responded to Plaintiff's demand. In responding the Allstate Defendants agreed, in
 20 writing, that \$450,000.00 was due to Plaintiff and disputed that the remaining \$550,000.00 of the
 21 \$1,000,000.00 limit of the Policy was due to Plaintiff. Despite agreeing that Plaintiff was
 22 entitled to (at least) \$450,000.00 under the Policy the Allstate Defendants have failed and
 23 refused, and continue to fail and refuse, to pay Plaintiff the \$450,000.00 not in dispute despite
 24 repeat and continuous demand.

25 23. At all relevant times all the necessary terms and conditions of the Policy were
 26 complied with by Plaintiff. The Allstate Defendants breached the express terms of the Policy,
 27 and the terms of the Policy required/read into the Policy under California law, by failing and
 28 refusing to tender the \$450,000.00 agreed to be due to Plaintiff despite repeat demand. Plaintiff
 timely demanded that the Allstate Defendants abide by the obligations under the Policy. The

ABBEY, WEITZENBERG, WARREN & EMERY P.C.
100 Stony Point Road, Suite 200, P.O. Box 1566, Santa Rosa, CA 95402-1566
Telephone: (707) 542-5030 Facsimile (707) 542-2589

1 Allstate Defendants have failed and refused to do so.

2 24. The Allstate Defendants unreasonably and tortuously breached the implied
3 covenant of good faith and fair dealing that they owed to Plaintiff under the express terms of the
4 Policy, and the terms of the Policy required/read into the Policy under California law, in the
5 following ways (including but not limited to):

6 A. Failing and refusing to tender the \$450,000.00 agreed to be due/not in dispute to
7 Plaintiff under the Policy in violation of California law which requires prompt payment of sums
8 agreed to be due/not in dispute in a first-party uninsured and/or underinsured motorist claim
9 without condition or delay by the insurer;

10 B. Failing and refusing to tender the \$450,000.00 agreed to be due/not in dispute to
11 Plaintiff under the Policy in violation of California Civil Code § 1525;

12 C. Failing and refusing to settle Plaintiff's claim for the \$1,000,000.00 limit of the
13 Policy when Plaintiff's damages clearly exceed the Policy limit;

14 D. Acting unreasonably with respect to Plaintiff and his interests in breach of the
15 covenant of good faith and fair dealing;

16 E. Failing to promptly respond to Plaintiff's communications with respect to the
17 claim;

18 F. Failing to follow standards for investigating and evaluating claims imposed by
19 law, the California Insurance Code, and/or the Department of Insurance regulations;

20 G. Adopting a narrow, strained, deceptive, and unreasonable interpretation of the
21 Policy inconsistent with the law, prior interpretation of the Policy, and the practice within the
22 insurance industry all in an effort to delay/deny the payment of benefits due under the Policy to
23 Plaintiff;

24 H. Withholding benefits due to Plaintiff when the Allstate Defendants knew, or
25 should have known, Plaintiff was entitled to those benefits;

26 I. Failing to thoroughly and properly investigate Plaintiff's injuries and damages;

27 J. Placing the Allstate Defendants' interests ahead of the interests of Plaintiff;

28 K. Misrepresenting and misconstruing rights under the Policy;

ABBEY, WEITZENBERG, WARREN & EMERY P.C.
100 Stony Point Road, Suite 200, P.O. Box 1566, Santa Rosa, CA 95402-1566
Telephone: (707) 542-5050 Facsimile (707) 542-2589

1 L. Attempting to mislead Plaintiff in order to prevent him recovering all benefits due
2 under the Policy;

3 M. Frustrating the reasonable expectations of Plaintiff by providing illusory and
4 deceptive coverage; and

5 O. Performing additional acts of unfair, unreasonable, and bad faith conduct, to be
6 proven at trial.

7 25. The Allstate Defendants' conduct has resulted in the unreasonable denial and
8 delay of benefits due to Plaintiff as described above.

9 26. As a direct result of the Allstate Defendants' unreasonable and bad faith conduct
10 Plaintiff has suffered damages (and continues to suffer damages) including, but not limited to,
11 the damages alleged above, attorney's fees and costs, general damages, special damages, interest,
12 consequential damages, and additional and further amounts/damages to be proven at trial.

13 27. The Allstate Defendants have engaged/are presently engaged in the practices and
14 conduct described herein in an attempt to force Plaintiff to settle his UM/UIM claim for less than
15 what he is due under the Policy. The Allstate Defendants have withheld (and presently are
16 withholding) benefits that they have acknowledged are owed/not in dispute in a bald attempt to
17 wait Plaintiff out and force Plaintiff to settle his claim for less than it is worth and, moreover, so
18 as to earn interest on the money presently due to Plaintiff that is being retained by the Allstate
19 Defendants. The Allstate Defendants knowingly and consciously are ignoring (and have
20 ignored) Plaintiff's rights and have done the alleged acts intentionally, maliciously, and as part of
21 a business practice that is designed to unfairly maximize the Allstate Defendants' profits to the
22 severe detriment of Plaintiff.

23 28. In doing the acts set forth above the Allstate Defendants acted maliciously,
24 oppressively, fraudulently, and in knowing and conscious disregard of Plaintiff's rights thereby
25 justifying an award of punitive damages in a sum adequate to punish them for such conduct and
26 to deter such conduct in the future.

27 WHEREFORE, Plaintiff prays for judgment as follows:

28 1. Payment of the \$450,000.00 due and owing under the \$1,000,000.00 Policy plus

1 interest at the legal rate of 10% from the date the obligation was owed (August 15, 2016);

2 2. Payment of the \$550,000.00 remaining due and owing under the \$1,000,000.00

3 Policy plus interest at the legal rate of 10%;

4 3. General and special damages according to proof;

5 4. Attorney's fees and litigation expenses in an amount according to proof;

6 5. Punitive damages according to proof;

7 6. Interest on all damages including, but not limited to, interest under California
8 Civil Code §§3287 and 3288;

9 7. Costs of suit herein incurred; and

10 8. Such other and further relief as the Court may deem proper.

11 Dated: October 4, 2016

ABBEN, WEITZENBERG, WARREN & EMERY

12 By: 

13 Michael D. Green, Esq.

14 Scott R. Montgomery, Esq.

15 Attorneys for Plaintiff Matthew Barnard

16
17
18
19
20
21
22
23
24
25
26
27
28
ABBEN, WEITZENBERG, WARREN & EMERY P.C.
100 Stony Point Road, Suite 200, P.O. Box 1566, Santa Rosa, CA 95402-1566
Telephone: (707) 542-5050 Facsimile (707) 542-2589

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA CIVIL DIVISION 600 ADMINISTRATION DRIVE, ROOM 107-J SANTA ROSA, CALIFORNIA 95403-2878 (707) 521-6500 http://www.sonoma.courts.ca.gov Barnard vs Allstate Insurance Company of California	(FOR COURT USE ONLY) ENDORSED FILED OCT 05 2016 SUPERIOR COURT OF CALIFORNIA COUNTY OF SONOMA
NOTICE OF ASSIGNMENT TO ONE JUDGE FOR ALL PURPOSES, NOTICE OF CASE MANAGEMENT CONFERENCE, and ORDER TO SHOW CAUSE	Case number: SCV-259537

**A COPY OF THIS NOTICE MUST BE SERVED WITH THE SUMMONS AND COMPLAINT
AND WITH ANY CROSS-COMPLAINT**

1. THIS ACTION IS ASSIGNED TO HON. RENE A CHOUTEAU FOR ALL PURPOSES.

Pursuant to California Rules of Court, Rule 2.111(7), the assigned judge's name must appear below the number of the case and the nature of the paper on the first page of each paper presented for filing.

2. EACH DEFENDANT MUST FILE A WRITTEN RESPONSE TO THE COMPLAINT AS REQUIRED BY THE SUMMONS.

A Case Management Conference has been set at the time and place indicated below:

Date: Tuesday, 02/07/2017	Time: 3:00 PM	Courtroom 18
Location: 3055 Cleveland Avenue, Santa Rosa, CA 95403		

3. No later than 15 calendar days before the date set for the case management conference or review, each party must file a case management statement [Judicial Council form #CM-110] and serve it on all other parties in the case. In lieu of each party's filing a separate case management statement, any two or more parties may file a joint statement.

4. At the conference, counsel for each party and each self-represented party must appear personally or by telephone [California Rules of Court, Rule 3.670(c)(2)]; must be familiar with the case; and must be prepared to discuss and commit to the party's position on the issues listed in California Rules of Court, Rule 3.727.

5. Pre-approved dispositions are recorded three (3) court days prior to the case management conference. These may be obtained by calling (707) 521-6883 or by going to <http://sonoma.courts.ca.gov/online-services/tentative-rulings>.

ORDER TO SHOW CAUSE

To Plaintiff(s), Cross-complainants, and/or their attorneys of record:

If, on the date shown above, you are not in compliance with the requirements stated in the California Rules of Court, rules 2.30, 3.110, and/or 3.720 through 3.771 inclusive, you must then and there show cause why this court should not impose monetary and/or terminating sanctions in this matter.

Pursuant to California Rule of Court, rule 3.221(b), information and forms related to Alternative Dispute Resolution are available on the Court's website at <http://www.sonoma.courts.ca.gov/self-help/adr>.

ELECTRONIC SERVICE OF DOCUMENTS**Enabled by Local Rule 18.16**

Voluntary e-service is available in Sonoma County. The Court has pre-approved a Stipulation for cases in which the attorneys or parties choose e-service. A copy of the Stipulation is available under the "Civil" section in the "Division" tab of the Court website: <http://www.sonoma.courts.ca.gov>. The advantages of e-service to the parties include:

SAVE MONEY	Reduction in costs related to photocopying, retrieving, storing, messenger and postage fees. No special software is needed to use e-service
SAVE TIME	Instant service of your documents on all parties
SAVE SPACE	With 24/7 internet access to all documents, you do not need to house paper copies
GAIN CERTAINTY	Immediate confirmation of service for your records. Documents are not delayed in the mail or blocked by email spam blockers and firewalls

To take advantage of e-service, select an e-service provider and file the signed Stipulation with the Court. Parties can then e-serve documents through the selected provider. Information about e-service providers is available at the website for the Sonoma County Bar Association: <http://www.sonomacountybar.org>. The Court does not endorse one provider over another.

To learn more about available e-service providers and their fees, please visit their website

Note: Hard-copy pleadings are required to be filed with the Court in accordance with applicable provisions of the Code of Civil Procedure, California Rules of Court and local rules. You do not need to provide a courtesy copy of a served document to the specific department in which the matter has been assigned.

DISCOVERY FACILITATOR PROGRAM

Effective January 1, 2008, the Sonoma County Superior Court promulgated Sonoma County Local Rule 4.14 which established the Discovery Facilitator Program. Participation in the Discovery Facilitator Program shall be deemed to satisfy a party's obligation to meet and confer under Sonoma County Local Rule 5.5 and applicable provisions of the Code of Civil Procedure and California Rules of Court. This program has been providing assistance in resolving discovery disputes and reducing the backlog of matters on the law and motion calendars in our civil law departments. The Sonoma County Superior Court encourages all attorneys and parties to utilize the Discovery Facilitator Program in order to help resolve or reduce the issues in dispute whether or not a discovery motion is filed.

There is a link to Local Rule 4.14 and the list of discovery facilitator volunteers on the official website of the Sonoma County Superior Court at <http://www.sonoma.courts.ca.gov>. On the home page, under the "AVAILABLE PROGRAMS & HELP" section, click on »[Discovery Facilitator Program](#). You can then click on either "Local Rule 4.14" to obtain the language of the local rule, or "List of Facilitators" for a list of the volunteer discovery facilitators and accompanying contact and biographical information.

ENDORSED
FILED

NOV - 7 2016

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

CYNTHIA L. MELLEMA (State Bar No. 122798)
JEFFRY BUTLER (State Bar No. 180936)
MEGAN BARKER (State Bar No. 245991)
DENTONS US LLP
One Market Plaza, Spear Tower, 24th Floor
San Francisco, California 94105
Telephone: (415) 267-4000
Facsimile: (415) 267 4198
E-mail: cynthia.mellema@dentons.com
jeffry.butler@dentons.com
megan.barker@dentons.com

Attorneys for Defendant
ALLSTATE INSURANCE COMPANY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

MATTHEW BARNARD,
Plaintiff,

No. SCV259537

ALLSTATE INSURANCE COMPANY'S
ANSWER TO COMPLAINT

vs.

ALLSTATE INSURANCE COMPANY;
ALLSTATE INSURANCE COMPANY OF
CALIFORNIA; and DOES 1-100, inclusive,
Defendants.

Defendant Allstate Insurance Company hereby answers plaintiff Matthew Barnard's
complaint (the "Complaint") as follows:

GENERAL DENIAL

Allstate generally denies each and every material allegation in the Complaint pursuant to
Code of Civil Procedure 431.30(d). Allstate further denies plaintiff sustained any injury,
damage, or loss by reason of any conduct, action, error, or omission on the part of Allstate.

Allstate files this answer without prejudice to its right to file a further amended answer or
other response, including cross-complaints, after conducting discovery.

DENTONS US LLP
ONE MARKET PLAZA, SPEAR TOWER, 24TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
(415) 267-4000

FILED
NOV 10 2016
CLERK OF COURT
COUNTY OF SONOMA

AFFIRMATIVE DEFENSES

(Applicable To All Causes Of Action)

First Defense

(Failure to State Cause of Action)

The Complaint, and each purported cause of action in the Complaint, fails to state facts sufficient to constitute a cause of action against Allstate.

Second Defense

(Waiver)

The Complaint, and each purported cause of action in the Complaint, is barred by the doctrine of waiver.

Third Defense

(Estoppel)

The Complaint, and each purported cause of action in the Complaint, is barred by the doctrine of estoppel.

Fourth Defense

(Unclean Hands)

The Complaint, and each purported cause of action in the Complaint, is barred by the doctrine of unclean hands.

Fifth Defense

(Laches)

The Complaint, and each purported cause of action in the Complaint, is barred by the doctrine of laches.

Sixth Defense

(Fault of Others)

Plaintiff's damages, the fact and extent of which Allstate denies, were either wholly or partially caused by and/or contributed to by the fault of others, whether that fault be the proximate result of intentional conduct, negligence, breach of contract, or any other type of fault, of persons, firms, corporations, or entities other than Allstate, for which Allstate is not

1 responsible. Such intentional conduct, negligence, or fault bars recovery against Allstate or
2 comparatively reduces the percentage of fault or negligence, if any, of Allstate.

3 **Seventh Defense**

4 **(Consent and/or Authorization of Plaintiff)**

5 Plaintiff consented to and/or authorized all conduct and/or omissions of Allstate alleged
6 in the Complaint.

7 **Eighth Defense**

8 **(Active Fault of Plaintiff)**

9 The Complaint, and each purported cause of action in the Complaint, is barred by
10 plaintiff's active fault.

11 **Ninth Defense**

12 **(Comparative Fault)**

13 The Complaint, and each purported cause of action in the Complaint, is barred and/or
14 plaintiff's recovery is reduced because plaintiff's alleged damages resulted from plaintiff's
15 comparative fault.

16 **Tenth Defense**

17 **(Mitigation of Damages)**

18 To the extent plaintiff failed to mitigate, minimize or avoid any damages allegedly
19 suffered, plaintiff's recovery against Allstate, if any, must be reduced by that amount.

20 **Eleventh Defense**

21 **(Assumption of Risk)**

22 Plaintiff knew, or in the exercise of reasonable care should have known, the risks of the
23 matters alleged in the Complaint. Plaintiff knowingly and voluntarily assumed and accepted
24 such risks, and any damages allegedly caused by Allstate's conduct were the proximate result of
25 plaintiff's assumption and acceptance of such risks.

Twelfth Defense**(No Causation)**

Plaintiff is entitled to no relief from Allstate because plaintiff sustained no injury, damage, or loss by reason of any conduct, act, error, or omission on Allstate's part.

Thirteenth Defense**(Privilege)**

Allstate's alleged acts, conduct, and/or omissions were lawful, privileged, and/or justified.

Fourteenth Defense**(Intervening Cause)**

Plaintiff's damages, the fact and extent of which Allstate denies, were proximately caused by intervening, superseding, and/or supervening acts for which Allstate has no liability.

Fifteenth Defense**(Election of Remedies)**

To the extent plaintiff elected to pursue a certain remedy, plaintiff is barred from pursuing or recovering under any other remedy under the doctrine of election of remedies.

Sixteenth Defense**(Accord and Satisfaction)**

The Complaint, and each purported cause of action in the Complaint, is barred by the doctrine of accord and satisfaction.

Seventeenth Defense**(Set-Off)**

Plaintiff's damages, the fact and extent of which Allstate denies, are set-off or extinguished under the equitable doctrine of set-off or under California Code of Civil Procedure section 431.70.

Eighteenth Defense**(Ratification of Conduct)**

With full knowledge of all facts in any way connected with or relating to the matters alleged in the Complaint, plaintiff duly ratified, acquiesced, and/or confirmed in all respects the conduct and/or omissions of Allstate alleged in the Complaint.

Nineteenth Defense**(Indemnification from Responsible Parties)**

To the extent Allstate is liable, if at all, for any of plaintiff's claims, the fact and extent of which Allstate denies, Allstate is entitled to indemnification, contribution, and/or equitable apportionment for such claims among all other parties responsible for plaintiff's claims.

Twentieth Defense**(Statute of Limitations)**

The Complaint, and each purported cause of action in the Complaint, is barred by the applicable statutes of limitation, including, without limitation, California Code of Civil Procedure sections 337, 338, 339, 340 and 343.

Twenty-first Defense**(Obligations Limited to Policy Terms)**

Allstate's obligations, if any, to plaintiff are governed and limited by the terms, definitions, exclusions, conditions, and limitations contained in the Allstate policy and endorsements (the "Policy").

Twenty-second Defense**(Policy Limits)**

The Policy provides coverage, if at all, only to the extent of the limits of liability listed on the declaration page or otherwise contained in the Policy form and endorsements.

Twenty-third Defense**(No Coverage for Claimed Losses)**

The Complaint, and each purported cause of action in the Complaint, is barred to the extent it seeks payment, reimbursement, contribution, or indemnification for, or is based on, a

loss the Policy does not cover, or is excluded from coverage under the Policy's terms, exclusions, conditions and limitations.

Twenty-fourth Defense

(Plaintiff's Failure to Comply With Policy Terms)

Plaintiff failed to satisfy the terms and/or conditions of the Policy, including but not limited to the conditions set forth under the Policy's provision stating what must be done following a loss.

Twenty-fifth Defense

(Allstate's Compliance With Policy Terms)

Allstate fully performed all obligations, both express and implied, owed to plaintiff under the Policy and applicable law.

Twenty-sixth Defense

(Arbitration Clause)

The Policy states "If we and an 'insured' disagree whether the 'insured' is legally entitled to recover damages from the owner or driver of an 'uninsured motor vehicle' or do not agree as to the amount of damages that are recoverable by that 'insured', the disagreement will be settled by arbitration." Plaintiff's claim for policy benefits are subject to arbitration under the Policy and/or California Insurance Code Section 11580.2.

Twenty-seventh Defense

(Stay of Proceedings)

Plaintiff's claims are subject to a stay in the instant litigation pending conclusion of arbitration under the Policy and/or California Insurance Code Section 11580.2. 9 U.S.C. § 3; 9 U.S.C. § 4; Code Civ. Proc. § 1281.4.

Twenty-eighth Defense

(Plaintiff's Claim Raised Genuine Issues)

Plaintiff's claims for damages in excess of any policy benefits either agreed on or awarded by an arbitrator are not recoverable because plaintiff's claims raised genuine issues

and/or disputes as to Allstate's duties, if any, under the Policy, and Allstate reasonably believed in the validity of these issues and/or disputes.

Twenty-ninth Defense

(Good Faith of Allstate)

Allstate's conduct was reasonable and in good faith, hence not tortious.

Thirtieth Defense

(Speculative Nature of Damages)

Plaintiff is not entitled to recover a monetary judgment because plaintiff's damage claims are speculative.

Thirty-first Defense

(No Entitlement to Attorneys' Fees)

Plaintiff is precluded from recovering attorneys' fees and costs from Allstate under applicable provisions of the law.

Thirty-second Defense

(No Punitive Damages)

The Complaint fails to state facts sufficient to entitle plaintiff to punitive damages.

Thirty-third Defense

(Unconstitutionality of Punitive Damages)

Plaintiff's claim for punitive and exemplary damages is barred because the California punitive damages statute is unconstitutional under the United States and California Constitutions in that, among other things, it is void for vagueness, violates the equal protection clause, due process clause, contract clause, and/or Eighth Amendment proscription against excessive fines, and imposes an undue burden on interstate commerce.

Thirty-fourth Defense

(Right to Assert Additional Defenses)

Allstate reserves their right to amend its answer to the Complaint to assert any additional defenses and/or applicable terms, provisions, exclusions, limitations or conditions of the Policy, as may become apparent during discovery in this action.

WHEREFORE, Allstate prays for judgment as follows:

1. That plaintiff take nothing by way of his Complaint and that the Complaint be dismissed with prejudice;
2. That judgment be entered in Allstate's favor;
3. That Allstate be awarded costs and attorneys' fees incurred in this action; and
4. For such other and further relief as this Court deems just and proper.

Dated: November 7, 2016

DENTONS US LLP

By 
MEGAN BARKER

Attorneys for Defendant
ALLSTATE INSURANCE COMPANY

DENTONS US LLP
ONE MARKET PLAZA, SPEAR TOWER, 24TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
(415) 267-4000

PROOF OF SERVICE BY MAIL

Matthew Barnard v. Allstate Insurance Company, et al.
Sonoma County Superior Court
No. SCV259537

I am a citizen of the United States and employed in County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1999 Harrison Street, Suite 1300, Oakland, California 94612. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On November 7, 2016, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

ALLSTATE INSURANCE COMPANY'S ANSWER TO COMPLAINT

in a sealed envelope, postage fully paid, addressed as follows:

Michael D. Green, Esq.
Scott R. Montgomery, Esq.
ABBEY WEITZENBERG WARREN &
EMERY, P.C.
100 Stony Point Road, Suite 200
PO Box 1566
Santa Rosa, CA 95402-1566
Telephone: 707-542-5050
Facsimile: 707-542-2589
Email: egreen@abbeylaw.com
smontgomery@abbeylaw.com

Attorneys for Plaintiff
Matthew Barnard

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 7, 2016, at Oakland, California.



Adrienne Hankins